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by

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FOREWORD

The Eastern Arctic Study is a joint project of the Institute of Local Government and the Centre for Resource Studies, both at Queen's University in Kingston. Funding for the study has been provided by the Donner Canadian Foundation.

This paper is one of a series of case studies that was completed in 1982 as background material for the Eastern Arctic Study, and which was used to develop scenarios for possible future developments in constitutional change, land claims settlements, local government, and the regulation of mineral development within the claim area of Inuit Tapirisat of Canada. The opinions expressed are those of the author, and do not necessarily represent the views of the Donner Foundation, or of the Institute of Local Government or the Centre for Resource Studies or their sponsors.

Katherine A. Graham
Principal Investigator
December 1982

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SUMMARY

This case study deals with the only comprehensive native land claim settlement negotiated up to the end of 1982 in Canada, the James Bay and Northern Quebec Agreement, signed on November 11, 1975. The parties to the agreement were the Government of Canada, the Government of Quebec, and the Cree and Inuit people of the James Bay Territory.

The comprehensive nature of the claim was reflected in the range of subject matters provided for in the agreement and in the subsequent legislation. Included were provisions related to a new land regime, structures of local government, health and social services, education, administration of justice, environment and development. Most of these matters were dealt with separately for the Cree and the Inuit peoples.

In keeping with the general focus and objectives of the Eastern Arctic Study, this paper examines those features of the agreement relevant to the interest of the Eastern Arctic Study, i.e. the implications of the land claim settlement for local government and for industrial development. For the purpose of the case study, industrial development is limited primarily to mineral exploration and development.

Three aspects of the agreement are of particular relevance to the Eastern Arctic Study:

i a complicated land regime which delineates three categories of land, with the Cree and Inuit having varying degrees of control and influence with respect to each category;
ii participation in the management of the hunting, fishing and trapping regime and in the environmental protection regime established under the agreement;
iii establishment of a system of local and regional government.

It is by virtue of these three aspects of the agreement that industry/community/government interaction takes place. In brief, this interaction occurs mainly through two distinct channels: local controls over the impact of development activities, and the environmental protection regime.

Local governments, however, have little effect on development. The agreement makes no provision for formal consultation between local government structures and industrial developers. The community thus has minimal opportunity to influence the pace or nature of development in the surrounding areas except through the environmental protection

regime, which is also limited in effect. It is unlikely that a developer would voluntarily consult with a community, let alone negotiate conditions of development, about proposed activities beyond the immediate vicinity of the community. Those developers who do deal directly with communities may be seen as exceptions to the general rule.

As the only comprehensive land claim settlement concluded in Canada to date, one would expect that the James Bay and Northern Quebec Agreement would have direct relevance for those groups who are at present involved in claims negotiations. However, those parties currently engaged in negotiations dismiss the agreement as a persuasive precedent, indicating that they are committed to viable political structures at the local/regional level, to participation in economic development and to a meaningful level of involvement in administrative/regulatory bodies.

It is possible, however, that, as happened in the case of the James Bay settlement, negotiable matters may be reduced if large-scale development seems imminent prior to a claim settlement. Perhaps the most relevant lesson to be drawn from the James Bay case is the effect of negotiating a settlement under intense pressure. In James Bay, this fact affected the tenor of the negotiations, the amount of leverage or negotiating power of the various parties, the content of the agreement and the course of the implementation.

1. INTRODUCTION

The overall objective of the Eastern Arctic Study is to examine the implications of constitutional development and of native land claims for local government and for industrial development in one particular land claim area, that of Inuit Tapirisat of Canda (ITC). An integral part of Eastern Arctic Study research is the undertaking of a series of case studies. The basic purpose of these is to examine specific instances of past industry/community/and other government interaction concerning industrial development.

Three types of case studies have been prepared. The first type, and likely the most important for the purposes of the Eastern Arctic Study, are studies of specific examples of interaction occurring within ITC's claim area. The second deals with interaction between companies, communities and other levels of government within the Northwest Territories but outside the ITC claim area. For example, the existence and potential importance of the COPE claim as a determinant of interaction between industry, local governments, and other levels of government is recognized as being in a separate category, although COPE is also formally a constituent part of ITC. Four case studies have been undertaken as representative of these two types of studies. These are set out in table 1.

Table 1

EASTERN ARCTIC STUDY MAJOR CASE STUDIES

Case	NWT/ITC	Long/Recent Community Involvement	Oil, Gas/ Hard Rock Mineral	Exploration/ Development
Nanisivik Mine	ITC	Recent	Hard Mineral	Development
Polaris Mine	ITC	Recent & Long	Hard Mineral	Development
Baker Lake	ITC	Recent	Hard Mineral	Exploration
Beaufort Sea	NWT	Recent & Long	Oil & Gas	Exploration

The final group of case studies concerns the industrial development regime established in jurisdictions which have already settled native land claims. By studying existing claim settlements, even in different political jurisdictions, it may be possible to identify the strengths and weaknesses of particular approaches to industry/community/government interaction. Accordingly, the James Bay and Northern Quebec Agree-

ment (both the Inuit and Cree settlements) and the settlement between the native peoples of Alaska and the United States and Alaskan State governments are examined. These two cases are being treated as supplementary ones, designed to provide an overview of the particular claims settlement involved and the apparent strengths and weaknesses of the industrial development process emanating from each.

The methodology followed for the supplementary cases differed somewhat from that for the four major cases. Reliance was placed on review of existing primary and secondary sources and on interviews with a number of knowledgeable parties. With respect to the James Bay case, interviews were conducted with government officials, both federal and provincial, in Ottawa and in Quebec City and with other interested parties when the occasion arose. Practical considerations precluded visits to communities in the territory covered by the agreement. Drafts of the case study were reviewed and commented upon by several individuals with expertise in the subject matter.

Thanks must be extended to those people who not only gave their time to be interviewed but who also provided documentation and relevant material. In particular I would like to thank Fred Caron, Department of Justice, Ottawa and Paul Tourigny, Secrétariat des activités gouvernementales en milieu amérindien et inuit (SAGMAI), Montreal, for their helpful comments on the draft of the case study.

This case study deals with the only comprehensive native land claim settlement negotiated in Canada to date, the James Bay and Northern Quebec Agreement signed on November 11, 1975. In general terms, the parties to the agreement were the Government of Canada, the Government of Quebec, and the Cree and Inuit people of the James Bay Territory. Appropriate federal and provincial legislation was enacted for the purpose of implementing the provisions of the agreement. A second and separate agreement was signed subsequently with the Naskapi Indians of northeastern Quebec.

The comprehensive nature of the claim was reflected in the range of subject matters provided for in the agreement and in the subsequent legislation. Included were provisions related to a new land regime, structures of local government, health and social services, education, administration of justice, environment and development. Most of these matters were dealt with separately for the Cree and the Inuit peoples.

It is not the intent of this case study to consider in depth all aspects of the James Bay and Northern Quebec Agreement, in terms of its substantive content or of its implementation. This approach is in no way meant to minimize the importance of what may be termed the social and cultural aspects of the agreement, for indeed these were central to the

overall thrust of the negotiations and the resultant agreement. Rather, in keeping with the general focus and objectives of the Eastern Arctic Study, the paper will examine those features of the agreement relevant to the interest of the Eastern Arctic Study, i.e., the implications of the land claim settlement for local government and for industrial development.

For the purpose of the case study, industrial development will be limited primarily to mineral exploration and development. The original project that provided the impetus for commencing and undertaking negotiations with the Cree and Inuit people was, of course, a vast hydro-electric scheme. It may be noted, moreover, that the agreement envisaged that other types of economic activities such as lumbering, hunting and tourism would develop as part of the overall economy. There was also recognition of the role to be played by the cooperative movement and by Makivik Cooperation. Makivik is a non-profit association without share capital which is responsible for receiving and administering the compensation paid to the Inuit under the James Bay and Northern Quebec Agreement. The corporation has become engaged in a variety of business and economic ventures both at the community level and beyond. This case study will not focus on these other economic and developmental activities but rather will deal in the main with mineral exploration and development.

Specifically discussed below are the land regime, structures of local government, and the environmental assessment regime. These three matters are the subject of separate chapters in the case study. Following a description of the provisions and structures established to deal with each, an attempt will be made to assess how they fit together in terms of industry/community/other government interaction concerning industrial development. Preliminary comments will also be presented regarding the lessons that may be learned from the James Bay situation and applied during the course of future Eastern Arctic Study work.

Before proceeding to the details of the land regime, local government and environmental assessment, it is necessary to put these three specific matters in perspective with regard to the overall agreement. Accordingly, the next chapter will discuss in a general way the essential features of the James Bay and Northern Quebec Agreement, particularly those that seem to be unique.

2. THE JAMES BAY SETTLEMENT: OVERVIEW

Chronology of Events 1971-1975

The following is a brief overview of the chronology of events leading up to the James Bay and Northern Quebec Agreement. A more detailed chronology is appended as appendix A.

In April 1971 Premier Bourassa of Quebec announced an extensive range of proposals concerning the development of hydro-electric projects in the James Bay area of northern Quebec. Three months later legislation was enacted by the Quebec legislature establishing the James Bay Development Corporation (JBDC) 'to promote the development and exploitation of the natural resources of the territory'.[1] The JBDC was given the task of promoting and exploiting the natural resources and of planning and managing all future development in the James Bay region. The legislation also created the James Bay Municipality, to be under the auspices of the JBDC, and covering an area of some 133,000 square miles. The JBDC was to create subsidiaries to control various aspects of development: hydro-electricity, tourism, forestry, mining, and so on. Priority was given to hydro-electric development, for which the James Bay Energy Corporation (JBEC), then partly owned by JBDC and partly owned by Hydro Quebec, was established.

In July of 1971 a Joint Federal and Provincial Environmental Study Group was formed to study the ecological impact of the James Bay Project. The report of this study group, released in February, 1972, stated that the impact of the proposed development on the native population in the area was the most pressing and serious question to be resolved. This population, significantly, had never signed treaties, although there were three reserves established under the Indian Act and eight communities in the area.

With the assistance of grants from the federal government, the Cree and Inuit people of northern Quebec had started a process of informing the native people in the James Bay area of the proposed developments. This occurred in conjunction with essentially fruitless negotiations with the Quebec government and the JBDC about the project. The province in the early months of 1972 refused to negotiate with the native groups about the project itself, although it was willing to discuss the impact of the project on native life. Not surprisingly, the positions taken by the native people of James Bay and by the Quebec government concerning

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1. James Bay Region Development Act, S.Q., 1971, c. 34.

the nature and scale of the potential impact of the project were widely divergent.

The Indians of Quebec Association, the body representing the Cree in the James Bay area, indicated as early as March 1972 that it intended to seek an injunction to halt the James Bay project on the grounds that the JBDC had no right to proceed with the project until Quebec established clear title to the land involved. An appeal was also made to the federal Minister of Indian Affairs and Northern Development to use his power to stop the invasion of their land represented by the project.

The Indians and Inuit of Northern Quebec announced in May 1972 that they had commenced legal action against the Quebec Attorney-General and the James Bay project contractors to halt the project. They also charged the provincial government with bad faith during the discussions and negotiations that had taken place. In response the JBDC stated that, notwithstanding any court action, the Corporation and Hydro-Quebec would proceed with the preliminary work already underway. Indeed in the same month Premier Bourassa announced that the James Bay project would begin with the development of the La Grande River complex, flooding some 3,400 square miles. During this period the federal minister continued to urge the Quebec government and the JBDC to engage in full discussions with native interests.

In June 1972 Cree and Inuit leaders issued an ultimatum giving the federal and Quebec governments until June 14 to negotiate substantial changes to the James Bay project. Failure to initiate a meeting, they indicated, would lead to the seeking of a temporary injunction to stop the project. In October, following a series of unproductive meetings with various officials of the federal government, the provincial government, and the JBDC, the Indians of Quebec Association instituted proceedings to obtain an injunction halting the James Bay project.

The hearing with respect to the injunction took place from December 1972 until June 1973. It was not until November, however, that a judgement was handed down granting the injunction and ordering the work on the project stopped. The effect of the injunction, however, was suspended within days by the Quebec Court of Appeal pending a hearing on the merits of the earlier judgement. Work on the project therefore resumed.

It was at this juncture that the province opened more serious negotiations with the native residents of the James Bay Territory. An initial settlement offered by the Quebec government was rejected by the native negotiators on the grounds that it failed to recognize that their primary interest was in the land and in the native way of life. Over the next months, as work on the project proceeded to the point where it was irrevocable, negotiations continued involving at various times the

Northern Quebec Inuit Association, the Indians of Quebec Association (replaced in June 1974 by the Grand Council of the Cree), the federal government and the provincial government.

An Agreement-in-Principle was signed in November 1974, followed by a year of intensive negotiations culminating in a final agreement in November 1975.[2] During the course of the next few years the federal and the provincial governments enacted legislation implementing the agreement.

It may be noted that the significant effort involved in drafting and enacting the subsequent enabling legislation resulted to some degree in the renegotiation of some aspects of the original agreement. In particular, provincial legislation giving effect to specific aspects of the agreement raised problems. Some details not provided for in the original agreement also produced confusion and misunderstanding with respect to both the intent and the substance of the agreement.

Some Elements of the James Bay and Northern Quebec Agreement [3]

The land claim settlement made with the Cree and Inuit of Northern Quebec falls into the category of comprehensive claims, i.e. those claims that are made by native people on the basis of the loss of native interest in those areas of Canada where such interest has not been previously extinguished by treaty or superceded by law. This was clearly expressed in section 2 of the agreement where it was stated:

> In consideration of the rights and benefits herein set forth in favour of the James Bay Crees and the Inuit of Quebec, the James Bay Crees and the Inuit of Quebec hereby cede, release, surrender and convey all their Native claims, rights, titles and interests, whatever they may be, in and to land in the Territory and in Quebec, and Quebec and Canada accept such surrender.

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2. The James Bay and Northern Quebec Agreement, DIAND, 1976.

3. The reader is referred to the Agreement itself for detail with respect to matters, particularly of a social and cultural nature, not addressed here.

This 'extinguishment' of native interests has been the source of serious problems with respect to the agreement[4] and is at the base of the objections of three dissident Inuit communities in northern Quebec.

To a degree, an underlying objective of the settlement was suggested in the preamble to the agreement which stated that it was desirable 'to take measures for the organization, reorganization, good government and orderly development' of the areas concerned. With respect to development, central responsibility for achieving this objective was reaffirmed as falling on the JBDC, JBEC and Hydro-Quebec. While the agreement did recognize certain rights and provide for a variety of social, cultural and economic benefits for the Cree and Inuit people, a fundamental effect of the agreement was to confirm Quebec's right to develop the whole of the James Bay area subject to a number of restrictions. Also worthy of comment is the fact that, under the terms of the agreement, the developers of the vast hydro-electric project assumed a number of responsibilities related to remedial environmental undertakings and to the relocation of the community of Fort George.

When considering the substance of land claims settlements in general, it is possible to envisage a spectrum or continuum. At one end one could conceive of a settlement containing features such as native control over development, native ownership of mineral rights, native control over access, mandatory equity participation and the establishment of political structures responsive to native traditions and interests. One could move along the spectrum with modifications of these features to the opposite end where a settlement would be essentially one of 'land and cash'. In other words, the native beneficiaries under the agreement receive, as the central components of the settlement, a negotiated amount of monetary compensation and ownership and/or control over selected tracts of land. It may be suggested that, even acknowledging the various social and cultural provisions, the James Bay Settlement demonstrates the primary characteristics of a limited 'land and cash' type of settlement.

Appendix B contains a brief outline of the major provisions contained in the James Bay and Northern Quebec Agreement. In terms of the content of the agreement, three aspects are of particular relevance to the Eastern Arctic Study:

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4. For example, see Brief to the Standing Committee on Indian Affairs and Northern Development, House of Commons. Submitted by Makivik Corporation on behalf of the Inuit of Quebec, March 26, 1981.

i a complicated land regime which delineates three categories of land with the Cree and Inuit having varying degrees of control and influence with respect to each category;

ii participation in the management of the hunting, fishing and trapping regime and in the environmental protection regime established under the agreement;

iii establishment of a system of local and regional government.

Implementation of the agreement has resulted in the establishment of a complex array of councils, corporations, boards, commissions and committees, some of which operate on a local basis and others on a regional basis. This may reflect a bias in the agreement and in the implementing legislation in favour of administrative rather than political structures and processes. This bias may to a large extent be traced to the refusal of the federal government to deal with political development in the context of claims negotiations and settlement. The separation of political issues from claims issues persists to this day. It continues to cast claims negotiations into a framework which is divorced from political developments in a formal sense and which restricts discussions to nonpolitical structures such as management boards and administrative agencies. Left unresolved are issues related to how these structures will relate to the political process (particularly in a fluid, evolving political milieu such as one finds in the Northwest Territories today) and to how these structures may be held accountable for their decisions and actions.

The James Bay experience may hold certain lessons for those who are negotiating claims today. For example, the multiplicity of administrative and advisory bodies established has resulted in an overly-complex, overly-complicated bureaucratic system. It may also have retarded the development of the formal political bodies established under the agreement and the political leadership required of such bodies. While the Cree and Inuit had both individuals and 'political' organizations that reflected and expressed their political will and aspirations, the time required and other types of demands made by the new structures placed a heavy burden on the native leadership required of such bodies.[5]

As noted above, it is not a purpose of this study to provide a thorough analysis or critique of either the substance or the implementation of the entire James Bay and Northern Quebec Agreement. Suffice it to say here that considerable attention continues to be focused on the

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5. This situation has been documented in Negotiating A Way of Life, prepared by SSDCC, 1979.

James Bay experience, particularly with respect to the problems associated with implementation.[6]

Negotiations as an Example of Industry/Community/Government Interaction

Subsequent sections in this case study will examine the manner in which industrial developers, and communities and other levels of government might interact under the structures and processes that have emerged since the James Bay claims settlement. It will be seen that this occurs mainly through the environmental assessment regime and in a less significant way through local controls over the impact of development activities. To date there do not appear to have been many specific examples of such interaction.

Before proceeding, however, it would be of interest to consider the context and nature of the negotiations leading up to the James Bay and Northern Quebec Agreement as a modified example of industry/community/government/ interaction concerning a major resource development. While the circumstances were unique at the time, it is not unreasonable to conceive of a similar situation elsewhere in which a native land claim is being negotiated at the same time as a major resource development project is being designed and preliminary work undertaken. Indeed one can see this happening to a large extent in the Northwest Territories today. A brief examination of the James Bay situation in this light may be instructive for those involved in negotiating other land claims.

The announcement in April 1971 of the James Bay hydro-electric scheme and the enactment of the James Bay Region Development Act were preceded by virtually no consultation or negotiation with the people or communities in the vast territory that was directly affected. Such studies as were done by the provincial government related to the resource potential of the area rather than to the environmental impact or the effects on the lives and livelihood of the native residents of the area. Moreover, the project was initiated without regard for outstanding questions concerning native rights and concerning the obligations of the Pro-

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6. For example, see Brief to the Standing Committee on Indian and Northern Affairs, supra, submitted by Makivik Corporation; Cree Statement to the Standing Committee on Indian Affairs and Northern Development, House of Commons, March 26, 1981; Report on the Implementation of the Provisions of the James Bay and Northern Quebec Native Claims Settlement Act, Hon. John C. Munro, Minister of Indian Affairs and Northern Development, tabled in the House of Commons, November 18, 1980.

vince of Quebec to the Cree and Inuit in the territory. The actions of the Quebec government and its agents demonstrated an assumption that they had a right to build the project, and indeed any project in the territory, without reference to natives or their rights. It may be posited that pressure from three sources combined to bring the provincial government to the negotiating table: from the natives in the territory, from the federal government, and from the judgement granting the initial injunction. Once the province was engaged in negotiations, however, its emphasis on the importance of development in the James Bay area continued, to a significant extent, to obscure fundamental questions related to the settlement issues related to native land claims and native rights.

The native peoples of the territory were presented with what can only be termed a fait accompli in the form of the vast project proposed for the area. This had immeasureable repercussions vis-á-vis subsequent negotiations. When serious discussion finally commenced, work on the preliminary infrastructure of roads, airports and construction camps had already begun. While native opposition in the form of litigation might delay construction, it became painfully clear that nothing would stop it. Thus negotiations were conducted against the backdrop of a construction project that was gaining momentum daily and could be interpreted as narrowing the range of negotiable items. It is not surprising that under such circumstances native negotiators concluded that they had little option but to reach an expeditious agreement with the provincial government. In doing so, native negotiators were successful in obtaining some modifications to the project, but in no way can it be argued that the Cree and the Inuit played an influential or meaningful role in negotiating the conditions or terms of development. Nor, it may be argued, did the substance of the provisions contained in the agreement assure them a strong role in the future. As will be seen below, development can proceed on most land in the territory with minimal, if any, reference to the native residents in terms of negotiating conditions or requirements. Moreover, the agreement does not provide for tangible benefits from future development such as might be represented by royalties[7] or equity participation arrangements. It does, however, provide for the payment of compensation in some instances.

In fairness it may be added that other factors contributed to a less than optimal environment for carrying out negotiations. Very import-

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7. The Agreement-in-Principle had included provision for payment of royalties to the Cree and Inuit. This provision was deleted from the final agreement on the grounds that development and the royalties that might result were uncertain. A fixed amount of compensation was considered preferable by the native negotiators.

antly, negotiators on all sides were grappling with an array of issues in the absence of firm guidelines or reference points. There was no previously settled native land claim to look to as a precedent or model. Moreover the thorny and complex question of the extent of aboriginal rights remained unresolved. These and other factors such as split jurisdiction as between the federal and provincial governments produced a negotiating environment that was both difficult and perplexing.

A feature of the James Bay situation that was, and indeed continues to be, both unique and compelling is the fact that the major 'developer' is a public corporation rather than a private corporation. Furthermore, the James Bay Development Corporation was authorized specifically by an act of the provincial legislature 'to promote the development and exploitation of the natural resources in the territory' and was given, among other things, broad powers of expropriation to carry out that mandate. With the full weight and prestige of the Government of Quebec behind it, the bargaining position of the JBDC and its associates was inordinate. There is also evidence that the JBDC occupied a commanding position within the government. The result, not unexpectedly, was a vast project that was quite resistant to attack or modification. The objectives of the 'developer' and of the provincial government were the same; the government had provided the JBDC with the power and authority to carry out those objectives. In no meaningful way could those groups or interests who were opposed to the project itself or to the speed at which it was being undertaken look to government for support or protection.

Certainly, it is often the case that government and private industry engage in joint ventures or that government actively supports industry in its undertakings. The James Bay experience, however, is a unique example of a public developer engaging in an immense project with virtually no possibility of consideration being given to divergent interests, interests that might under other circumstances have looked to government to act as a proponent of their concerns relating to the environment and to the impact of the project on people and their communities. Here, however, the provincial government was in effect also the 'developer' or industrial proponent. This fact, in combination with the vast scale of the project, rendered the interests and concerns of the native residents of the territory secondary in importance.

3. THE LAND REGIME

Introduction

It is essential at the outset to recognize that questions of land ownership and land use are central to the culture and way of life of the Cree and Inuit in the James Bay area. This was reflected not only in the negotiation stage of the James Bay and Northern Quebec Agreement but also in the resulting provisions establishing the land regime and other matters such as local government, environmental control, and industrial and resource development processes. It will be seen in subsequent chapters that, for example, structures of local government vary with the categories of land established under the land regime.

Sections 5 and 7 of the agreement set out the land regime south of 55 (Cree) and north of 55 (Inuit). As with other matters the Agreement treats these two areas distinctly although in both instances three broad categories of land are delineated. This chapter will describe and comment on the nature and major features of this land regime focusing particularly on those aspects bearing on industrial development and local government.

Cree Lands - South of 55

Categories of Land

Under Category 1 lands the Cree are allotted tracts of land having an area of approximately 2,158 square miles and subdivided into 1A, 1B and special 1B lands.

Category 1A lands are set aside for the exclusive use and benefit of the Cree bands and are under the administration, management and control of the Government of Canada. These lands comprise some 1,274 square miles. The Province of Quebec has retained bare ownership of the land and ownership of the mineral and subsurface rights over such lands. Category 1A lands, it may be suggested, bear resemblance to reserve lands found elsewhere in the country. These lands can be sold or ceded only to the Province of Quebec, in which case these lands must be replaced or compensation paid to the Cree.

Category 1B lands comprise approximately 884 square miles and are owned outright by Cree Community Corporations incorporated under provincial laws. These lands can be sold or ceded only to the Province of Quebec. If expropriated by Quebec, however, these lands must be replaced or compensation paid to the Cree.

Certain 1B lands, on the banks of the Rupert, Eastmain and Fort George Rivers, are designated 'special category 1B lands'. Accordingly, they are subject to public servitudes; any other developments by Quebec can occur with the consent of the Cree community concerned; and Quebec has access to the lands as if they were Category II lands (i.e. as if Quebec owned them).

Category II lands comprise 25,130 square miles in which the Cree have exclusive right of hunting, fishing and trapping. The Province of Quebec retains title to the land and has jurisdiction over it.

Category III lands are all those lands south of 55 which are neither Category I nor Category II lands. These lands are owned by Quebec and there are no exclusive rights reserved for the Cree. Category III lands encompass a vast proportion of the territory covered by the agreement.

Third Party Interests

On Category I lands, holders of leases, occupation permits or other authorizations granted by the province before execution of the agreement can continue to exercise their rights as if such lands were Category II lands, until expiry of the term fixed for the exercise of those rights. Quebec has the option of reserving the rights, subject only to considering the zoning of the municipality.

Third parties are subject to the by-laws of the Cree local authority as if such lands formed part of Category I lands. Such persons have a right to all services of a municipal nature which are offered by the Cree local authority.

As with Category I lands, Category II lands already ceded are excluded. Moreover, lands within the area of Category II lands which are subject to rights already granted to third parties prior to the execution of the agreement (for example, exploration permits and mining leases) are Category III lands.

At such time as these rights are reverted to the Crown, the lands shall be Category II lands. The James Bay Development Corporation has the right to explore, develop and mine Category II lands as if they were Category III lands.

On Category III lands third party interests are not affected in any way by the terms of the agreement.

Mineral Rights

Mineral and subsurface rights with respect to all categories of lands are owned by Quebec with the exception of those rights given to third parties as of the execution of the agreement.

No minerals or other subsurface rights can be extracted, mined or exercised, however, with respect to Category I lands without the consent of the community with rights over the land and only upon payment of compensation for such use. Consent of interested communities, however, is not required for work undertaken by JBDC or by interests granted rights prior to the agreement being executed.

On Category II lands mineral exploration and technical surveys are not considered development activities (see below) and hence may be carried out without replacement of land or compensation. They must, however, be carried out subject to environmental protection provisions and in such a manner as to avoid conflict with the rights of the Cree beneficiaries.

On Category III lands the exercise of mineral rights is subject only to provincial regulation and to the provisions of the environmental assessment and regime.

Access

The public has access to all public servitudes on Category I land. The following are also permitted access:

i persons authorized to live on Category I lands;
ii persons authorized to exercise a public function or engaged in technical surveys, the construction or operation of a public work or public utility;
iii owners of mineral rights or persons engaged in the exercise of those rights
iv other persons authorized by the local Cree authority.

Moreover, the local Cree authority has by-law power to regulate access provided the right of access is not unduly restricted.

Subject to the hunting and fishing rights of the Cree beneficiaries, individuals exercising a right compatible with such rights have access to Category II lands and may remain there and erect constructions on those lands. Persons wishing to carry out exploration activities, predevelopment activities, scientific studies and administrative activities which require substantial operations in the field must obtain authorization from

the provincial government. Such activities are to be carried out in such a manner as to avoid unreasonable conflict with the hunting and fishing rights of the Cree.

On Category III lands general access is in accordance with provincial legislation and regulations concerning public lands.

Development

Provisions with respect to development apply only to Category II and Category III lands.

Category II lands may be expropriated by Quebec for development subject to replacement or compensation. Development means any act or deed which prevents hunting, fishing or trapping activities of Cree, but does not extend to 'pre-development activities' which are defined as acts or deeds of an exploratory nature exercised during a limited time with the objective of researching information to decide if development will take place or not. This suggests that predevelopment activity is assumed not to interfere with native harvesting, although it could be argued that such activities potentially are very damaging.

The Government of Quebec, JBEC, JBDC, Hydro Quebec and others authorized to do so are entitled to develop the lands and resources in Category III lands. In doing so, these developers may modify or regulate the flow of rivers in Category I or Category II lands and have downstream effects on these lands. The rights granted to the Cree beneficiaries respecting hunting and fishing rights are subject to the rights of developers to develop Category III lands.

Inuit Lands - North of 55

Categories of Land

Category I lands comprise approximately 3,250 square miles. Title is vested outright in Inuit Community Corporations and the land can be sold or ceded only to Quebec.

Within Category I lands there are special Category I lands along the rivers or bays opposite Category I communities and subject to the same provisions as the Cree Category 1B lands.

Category I lands are subject to public servitudes as established by Quebec or its agents. All public bodies, agencies and corporations

authorized by law are allowed to *expropriate for the purpose of establishing* public servitudes, subject to the payment of compensation in money or in an equivalent amount of land at the option of the Inuit Community Corporation concerned.

Category II lands have a total area of 33,400 square miles. Such lands are public lands in that Quebec retains title and jurisdiction over these lands. The Inuit have been given exclusive rights of hunting, fishing and trapping on these lands.

Category III lands are all the land in the territory not included in Category I and II. There are no exclusive rights reserved to the Inuit with respect to these lands.

Third Party Interests

Category I lands ceded to third parties by letters patent or owned prior to the execution of the agreement are treated as Category III lands. Holders of leases or permits from Quebec over Category I lands can exercise those rights as if they were Category III lands until termination of the leases. In exercising its option to renew the rights, Quebec will consider the zoning plan of the municipality.

Where such lands are situated within the boundaries of a municipality, the by-laws of the municipality apply to the holder of those rights and that person is entitled to municipal services.

Lands already ceded to third parties prior to execution of the agreement are excluded from Category II lands. Lands subject to third party rights such as mining leases are treated as Category III lands. Should these rights revert to the Crown, such lands will be treated as Category II lands.

On Category III lands third party interests are not affected by the terms of the agreement.

Mineral Rights

Mineral and subsurface rights with respect to all categories of land are owned by Quebec with the exception of those vested in third parties at the time of the agreement.

Lands within Category I with mining claims, leases, development licenses or exploration permits at the time of the agreement are treated as Category III lands. Upon expiration of these rights, or upon renewal, ownership of these lands is transferred to the Inuit Community Corporation concerned. If any of these lands are taken for development, Quebec will replace the land or compensate with money.

No mineral or other subsurface rights may be obtained with respect to Category I lands without the consent of the interested Inuit Community Corporation and without the payment of compensation.

All mining exploration and operations undertaken on or over Category I lands or immediately adjacent lands are subject to the Environmental and Social Protection Regime established pursuant to the agreement.

On Category II lands, mineral exploration, technical surveys, mapping and diamond drilling activities may be carried out without replacement of lands and without payment of indemnity. Such activities, however, must be undertaken so as to avoid unreasonable conflict with Inuit harvesting activities.

On Category III lands the exercise of mineral rights is subject only to provincial regulation and to the provisions of the environmental assessment regime.

Access

On Category I lands the public has access to all public facilities, buildings and land for public purposes. Persons involved in a range of endeavours including construction, operation of public utilities, surveys, the exercise of mining rights and so on are granted access to the extent required.

Parties with exercisable rights on Category II lands are allowed access. This includes those wishing to carry out exploration, predevelopment activities and scientific studies. These may be subject to obtaining authorizations from the Government of Quebec and are subject to Inuit rights with respect to hunting, fishing and trapping.

Category III lands, except those already ceded, are public lands and access is in accordance with provincial legislation for any public lands.

Development

Provisions with respect to development apply only to Category II and Category III lands.

Category II lands may be appropriated by Quebec or its agents for development purposes subject to replacement by land or money. Development means any act or deed which precludes hunting, fishing and trapping activities, except for 'pre-development' which is defined as any act or deed relating to surveys and research in the field for a limited period of time for the purpose of gathering information with a view to deciding whether or not development will take place.

As with the Cree lands, predevelopment activities are not considered to interfere with Inuit rights or to cause damage. Similarly, mineral exploration, technical surveys, mapping and diamond drilling may be carried out without replacement of lands and without payment of compensation as long as these activities avoid 'unreasonable conflict' with harvesting activities.

The Government of Quebec, Hydro Quebec and other bodies such as the JBEC and JBDC have the right to develop Category III lands. Category II lands taken for development by Quebec become Category III lands for the purpose of development. Any rights and guarantees given to native people are subject to this right to develop Category III lands. Developers are subject to the provisions of the environmental regime.

As with the land regime in Cree territory, developers in Category III land may modify or regulate the flow of rivers in such a way as to cause effects downstream on Category I and Category II lands.

4. LOCAL GOVERNMENT

Sections 9-13 of the James Bay and Northern Quebec agreement contain provisions with respect to local and regional government. As with other matters, the Cree and Inuit are considered separately. Indeed, the structures established differ significantly, with Inuit local and regional structures being integrated to a large extent with the Quebec municipal system, while Cree structures remain a hybrid of Indian Act bands and provincial corporations. Since it is probable that, in the post-claims environment of the Northwest Territories, local and regional government will be part of a territorial municipal system, it is suggested that the arrangements north of 55 are of more relevance to the Eastern Arctic Study. Nevertheless both Cree and Inuit provisions are described below.

Cree Territory - South of 55

Local Government over Category I Lands

As it was prior to the agreement, local government on Category 1A lands continues to be as prescribed under the Indian Act, i.e. elected band councils with limited specified authority. Section 9 of the James Bay and Northern Quebec Agreement provides that the federal government shall enact special legislation concerning local government for the James Bay Cree on Category 1A lands. Since the agreement was executed, the Department of Indian Affairs and Northern Development has been negotiating the terms and conditions of local government and preparing appropriate legislation. At time of writing this legislation had not been introduced by the Minister and it is unclear when it might be anticipated. Accordingly, the Cree Band Councils continue to derive their authority from the Indian Act. The new Cree Act will in no way integrate band government into the provincial municipal system, but rather will only serve to modify the existing situation.

At present, Cree Band Councils provide municipal management of Cree villages and adjacent lands falling within Category 1A. It is expected that the new legislation will provide for incorporation for local government purposes and increased powers for community councils. When consents are required in order for development activities to take place on Category 1A lands, it is the band council that has authority to give that consent.

Quebec legislation provides for the incorporation of municipalities in areas covered by 1B lands. Each corporation has the powers of a municipality under the Quebec Cities and Towns Act, subject to a number of

modifications. Membership on the municipal council is the same as that on the elected Band Council with jurisdiction over 1A lands. Then bodies are known as Cree Community Corporations.

These municipal corporations have the power to make by-laws for environmental and social protection and for protection and use of natural resources provided they in no way restrict development which is underway on land outside of Category I.

To date the exercise of this by-law power has been limited. In instances where consent is required prior to the undertaking of development activities the council is the body with authority to give that consent. The corporation may enter into an agreement with the Cree Regional Authority (CRA - see below) by which it delegates to the CRA the establishment or administration of a municipal service.

It may be posited that the main purpose of the Cree Community Corporation is the surface ownership and management of Category 1B lands since in fact no one lives on 1B land.

Cree Regional Authority

Established under provincial legislation, the Cree Regional Authority is composed of all corporations with jurisdiction over Cree Category 1B lands and all Cree in each of the communities. The main objects of the CRA are the following:

i at the request of a Cree village corporation or of a band, to put into effect, administer and coordinate, on Category I lands, the services or programmes established by and for that Cree village corporation or that band;

ii to give valid consent, on behalf of the James Bay Cree, where that consent is required pursuant to the agreement or an act;

iii to appoint the representatives of the James Bay Cree on the James Bay Regional Zone Council and, where such representation is provided for, on all other agencies, bodies and entities established pursuant to the agreement or an act;

iv through the Board of Compensation, to receive, administer, use and invest the compensation provided for in chapter 25 of the agreement concerning James Bay and Northern Quebec;

v generally, to ensure the general well-being of the James Bay Cree.

The powers of the CRA are exercised by its council composed of the chairman and vice-chairman as well as the Mayor and one representative of each of the Cree community corporations.

In acting as an administrative agent of Cree communities, the CRA does not have by-law powers. Attached to the CRA as an administrative department is a Board of Compensation which has been established to receive, administer, use and invest the compensation received by the Cree under the agreement. It is composed of an equal number of representatives elected by each of the Cree communities and at least three members appointed by the CRA. There is also one representative from DIAND and two from the Quebec government.

Although created as an essentially administrative body with limited formal powers several factors have contributed to the development of the Cree Regional Authority into a strong, central political/administrative agency. Two particular factors may be suggested. First, the fact that the CRA controls and administers the financial compensation received under the agreement means that it has become a primary focus for political decisionmaking.

Second, the members of the CRA are able to influence decisionmaking in other areas by virtue of their appointment as representatives on other agencies and bodies.

It is possible, moreover, that the CRA over time may adopt certain characteristics of a local administrative entity that undertakes local functions over a regional area. This could occur if communities delegate local responsibilities with respect to services or programs to the Cree Regional Authority. The extent to which the CRA will, or indeed can, evolve into a regional government is an open question.

James Bay Municipality and the James Bay Regional Zone Council

The James Bay Municipality was established in 1971 under the James Bay Region Development Act and comprises all of the James Bay Territory except those municipalities previously incorporated, and Indian reserves. The Council of the James Bay Municipality is composed of the Board of Directors of the James Bay Development Corporation.

The James Bay Regional Zone Council exercises the powers of the James Bay Municipality over Category II lands. It is composed of six members, of whom three are appointed by and represent the James Bay Municipality, and three are appointed by and represent the Cree Regional Authority. The Regional Zone Council is governed by the Cities and Towns Act and exercises all the powers of a town subject to the James Bay Development Act.

Orders adopted by the Regional Council are not effective until ratified by the James Bay Municipality.

Inuit Territory - North of 55

Provincial legislation enacted subsequent to the agreement established both local and regional municipal governments in the territory occupied by Inuit. As noted above, these structures operate as Quebec municipalities, the only distinguishing characteristic being that provision has been made for a regional government. Unlike Cree local governments south of 55, municipal corporations north of 55 are nonethnic in character, in that all residents whether Inuit or not are eligible to participate in public government structures.

Northern Village Municipalities

The legislation providing for municipalities in the territory north of 55 is based on the Cities and Towns Act and the Municipal Code of Quebec. The elected council has authority to make by-laws to secure the peace, order, good government, health, general welfare and improvement of the municipality. This includes by-law powers relating to licensing and contracts, public security, public health and hygiene, town planning and provision of local public services such as roads and water.

These municipalities are distinct from individual Inuit Community Corporations which comprise all Inuit affiliated with each community. These corporations are land-holding bodies, holding title to Category I lands for Inuit community purposes including commercial, industrial, residential and other purposes. Moreover, it is the pertinent Inuit Community Corporation rather than the municipal council that determines whether equivalent land or compensation will be provided when land is expropriated for public purposes, and that grants or denies permission for new development on Category I lands.

Kativik Regional Government

The entire area north of 55 comprises a municipality under the jurisdiction of the Kativik Regional Government. Each municipality is represented on the council of the regional government by an appointed or elected regional councillor. The existence of a regional government is unique to this area of Quebec.

The regional government has competence in matters of local administration, transportation and communications, justice, health and social services, education, economic development, the environment, resources and land use management. Also, it may enter into an agreement with any municipal corporation for the delegation to the regional govern-

ment of responsibility for local service provision. Kativik Regional Government also acts as a local government and provides services to those areas that are not incorporated.

There also exist several special bodies at the regional level to administer specific programs. These include the Kativik School Board which reports to the Provincial Minister of Education but works with the regional government.

5. ENVIRONMENT AND FUTURE DEVELOPMENT

On 22nd December 1978, Bill 30 - An Act to Again Amend the Environment Quality Act, was given assent by the Assemblee Nationale du Quebec. The object of this bill was to give effect to sections 22 and 23 of the James Bay and Northern Quebec Agreement (sections dealing with environment and future development). Although the Environment Quality Act is applicable to the whole territory of Quebec, Bill 30 amended that act in order to introduce special and, it has been suggested, more stringent, provisions applicable only to the regions of James Bay and Northern Quebec.

This legislation provides for:

i the creation, for each of the regions occupied by the Cree and Inuit, of an Advisory Committee, certain members of which are appointed by the native people. The functions of these committees are to give advice on environmental matters to the governments and regional and local authorities and to see to the general application of the environmental and social protection measures which are proper to each of these regions:

ii the setting up of a special environmental and social impact assessment and review procedure;

iii the creation, for the territory south of 55, of an Evaluating Committee and of a Review Committee and, for the territory north of 55, of an Environmental Quality Commission, certain members of which are appointed by the native people. The duty of each is to collaborate with the director of environmental protection services, in the application and administration of the environmental and social impact assessment and review procedure.

In keeping with the fact that there are two distinct native groups in Northern Quebec, there are two environmental regimes provided for in the agreement. Both regimes provide for native participation, and both have two major components: an advisory body, and an impact assessment process. The advisory bodies are official forums for discussion between the federal government, provincial governments, and local authorities on matters related to environmental and social protection. The purpose of the impact assessment process is to encourage the consideration of environmental and social concerns in the decision-making process, from the planning stage on.

South of 55

James Bay Advisory Committee on the Environment

The advisory committee for the area south of 55 is the James Bay Advisory Committee on the Environment which is made up of members appointed by the Cree Regional Authority, Canada and Quebec. There are thirteen members on this committee: the CRA, Quebec and Canada each appoint four members, and the chairman of the Hunting, Fishing and Trapping Co-ordinating Committee is an ex-officio member. The federal representatives include two from Environment, one from DIAND, and one from Fisheries and Oceans.

Basically, the James Bay Advisory Committee is a consultative body to the federal and provincial governments, recommending legislation, regulations and other appropriate measures relating to the environmental and social protection regime, for enactment or action by the appropriate authority.

It examines environmental and social laws and regulations relating to the effects of development and proposes changes where appropriate, and examines and makes recommendations respecting the environmental and social impact assessment and review mechanisms and procedures for the territory. The committee is also consulted by relevant governments from time to time on major issues respecting the implementation of the environmental and social protection regime and land use measures.

Environmental Impact Assessment and Review

Certain types of future developments are automatically subject to assessment.[8] Some examples are: all new major mining operations, excluding explorations; energy production (hydro-electric power plants and their associated works, storage and water supply reservoirs, extraction and processing of energy yielding materials, etc.); forestry and agriculture in general, any significant change in land use (substantially affecting more than 25 sq. miles); community and municipal services; and transportation.

A number of qualifications must be kept in mind. First, despite the inclusion of mining developments in the list of projects automatically subject to the assessment and review procedure, there is the proviso that, notwithstanding their inclusion, mining exploration projects are not

8. These are listed in Schedule A of An Act to Again Amend the Environment Quality Act.

automatically subject to the assessment and review procedure outlined in the act. Moreover, not subject to environmental assessment are testing, preliminary investigation, research and experiments outside the plant, aerial or ground reconnaissance work and survey or technical works prior to any project. Most significantly, perhaps, Le Complexe La Grande described in Schedule I to Section 8 of the agreement has not been submitted to the assessment and review procedure. (The remedial work, such as the relocation of Fort George, should be noted, however.) The next stage of the James Bay project, the NBR project, will, however, be subjected to the procedures established under the act.

Other types of future developments are exempt from the requirement of impact assessment.[9] Some examples are: any development within the limits of non-native communities not directly affecting the wildlife resources outside those limits; small hotels, motels, service stations and similar structures on provincial or lesser highways; fossil-fuel fired power generating systems below 3,000 kilowatts; teaching establishments, banks, fire stations and other immoveables intended for administrative, recreational, cultural, religious, sports and health purposes and equipment for telecommunications; and construction and extension of a pipe main of less than 30 cm. in diameter to a maximum length of five miles.

For those projects subject to the review process, a certain procedure must be followed. The proponent of the project must first submit to the competent administrator a preliminary description of his project, specifying its purpose, nature, extent, and possible sites. The administrator transmits this information to the Evaluating Committee, which decides whether a detailed or preliminary study is more appropriate. The Evaluating Committee is an advisory body, composed of six members, two each appointed by Quebec, Canada and the CRA. It is under the administrative supervision of the James Bay Advisory Committee on the Environment. When the evaluating committee has decided on the nature and extent of the impact study, it forwards its recommendations to the administrator (who must take the recommendations into consideration), who then notifies the proponent of his decision. The decision as to whether an assessment will be undertaken or not thus rests with the administrator.

If directed to do so, the proponent must then prepare an impact statement and submit it to the administrator, who in turn refers it to either the Review Committee (provincial) or the Review Panel (federal), as the circumstances warrant. The Review Committee is composed of five members, three appointed by Quebec and two appointed by the Cree

9. These are listed in Schedule B of An Act to Again Amend the Environment Quality Act.

Regional Authority, and is the review body respecting development projects in the territory, involving provincial jurisdiction. The Environmental and Social Impact Review Panel (or 'the Review Panel') is the review body respecting development projects in the territory involving federal jurisdiction. It operates as part of the Federal Environmental Assessment and Review Process. It is composed of three members appointed by the federal government and two members appointed by the Cree Regional Authority.

The main objectives of the environmental and social impact statement are to ensure that:

i environmental and social considerations form an integral part of the planning and decision-making process;
ii potential environmental and social impacts resulting from development are identified as systematically as possible;
iii alternatives to the proposed action, including alternatives to individual elements of large-scale projects, will be evaluated with a view to minimizing, within reason, impacts on native people and wildlife resources and maintaining the quality of the environment;
iv remedial or preventive measures will be incorporated into proposed developments, so as to minimize, within reason, expected environmental and social impacts;
v the Review Committee, the Review Panel and the administrator are adequately informed to be able to take decisions for which they are responsible.

The Review Committee or Panel examines the impact statement, and hears representations from interested individuals, groups, communities and/or the CRA, and makes recommendations on action to be taken to the administrator, within forty-five days. The administrator then transmits his decision of acceptance or rejection to the proponent. If the decision is acceptance, the administrator may set conditions, such as remedial measures and/or further studies, which the proponent must fulfill before obtaining authorization for the project. At both the provincial and federal levels of government the Cabinet may alter or overturn the decision of the administrator.

North of 55

As in the area south of 55 an environmental and social impact assessment and review procedure is established, as well as advisory bodies to oversee the assessment and review procedure, and to make recommenda-

tions to the various levels of government. These mechanisms provide for the involvement of native people in their implementation.

Environmental Quality Commission

The Environmental Quality Commission (EQC) was established to be the preferential and official body responsible for participation in the administration and supervision of the environmental and social impact assessment process north of 55 with respect to matters and to development projects within provincial jurisdictions. There are nine members on the EQC: four appointed by the Kativik Regional Government (of whom at least two must be Inuit residents in the region, or their representatives), four appointed by Quebec, and a chairman appointed by Quebec, who must be acceptable to the regional government.

Certain development projects are automatically subject to the assessment project, and others are exempt from it.[10] Projects proposed in the territory north of 55 are subject to the same qualifications mentioned above as affecting projects south of 55. The director of the EQC, after consulting the commission, decides on the scope and content of the assessment to be undertaken. Impact statements for those developments subject to the assessment process must contain a description of the project, the environmental and social setting, prediction and evaluation of probable impacts, alternatives to the proposed project, and corrective and remedial measures. The director may direct the applicant to carry out supplementary research and studies.

The EQC, after examining and evaluating the impact assessment statement, makes recommendations to the Quebec administrator regarding the contents of any impact statement, deciding whether or not a development should be allowed to proceed. Before this decision is taken, however, interested individuals, groups or municipalities may make written representation to the EQC, or may be invited to make such representation. The Quebec administrator may then accept the recommendation of the EQC, modify it, or change it, with the approval of the Quebec minister. The provincial Cabinet also reserves the right to authorize a project to go ahead or to exempt a project from the assessment process where it considers it within the public interest to do so.

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10. These are listed in Schedule A and Schedule B of An Act to Again Amend the Environment Quality Act.

Environmental and Social Impact Review Panel

Development projects subject to federal jurisdiction fall under the Federal Environmental Assessment and Review Process. A screening committee composed of four members, two each appointed by Canada and the Kativik Regional Government, is under the administrative supervision of the Environmental and Social Impact Review Panel, and screens all development projects subject to the federal review process. The screening committee recommends to the federal administrator whether or not a preliminary and/or a final impact statement should be prepared by the proponent, and if so, to what extent.

The Environmental and Social Review Panel is the review body for all developments falling within federal jurisdiction, and is composed of three members appointed by Canada, and two members appointed by the Regional Government (who must be native people, or their duly-authorized representatives). On the basis of impact statements and any other information submitted before it, during the formal review stage which includes public meetings the panel recommends whether or not the development should proceed and, if so, under what terms and conditions. The ultimate decision, however, rests with the federal minister.

Kativik Environmental Advisory Committee

The Kativik Environmental Advisory Committee is composed of nine members, three each appointed by the regional government, Canada and Quebec, and is a consultative body which makes recommendations concerning the formulation of laws and regulations relating to the Environmental and Social Protection Regime. The committee will also, upon request, make available to local councils the information, technical or scientific data and the advice and technical assistance which it has at its disposal.

The Kativik Regional Development Council is involved with the Office de planification de developpment du Quebec (OPDQ) and is the preferential consulting body of the OPDQ in matters relating in public consultation and advice on development in the region north of the 55th parallel. It is free to comment on all studies conducted in the region, such as environmental studies and research and physical and socio-economic conditions related to development and environmental protection, and is supposed to encourage the implementation of information systems with Quebec and other agencies in order to facilitate communications.

Hunting, Fishing and Trapping Regime

Before proceeding, brief mention should be made of the hunting, fishing and trapping provisions of the agreement. To some extent these provisions augment the environmental protection provisions.

The hunting, fishing and trapping regime is based on the principle of conservation - conservation both of endangered species and of traditional pursuits of native people. Accordingly the agreement recognizes to a significant degree the priority of the native people's subsistence activities over other activities. This recognition, however, varies with the categories of land and is limited in other ways by specific terms of the agreement.

On Category I and Category II land the Cree and Inuit have exclusive hunting, fishing and trapping rights. It may be suggested, however, that this right is subject to several limitations that may as yet not be adequately defined. For example, the right to harvest is subject to the limitation that it does not 'conflict with other physical activity or public safety'. 'Physical activity' is defined as 'actual conflict or physical interference'. This raises a question as to whether development projects, perhaps at the exploration or feasibility study stage, will be considered to be in conflict with the right to harvest.

Similarly, under another section of the agreement, it is stated that the right to harvest is not be be construed as preventing or limiting access to the territory by non-natives in accordance with other provisions of the agreement. As noted above, Quebec has the right to expropriate land for development. Moreover, surveys and other exploration activities may be carried out. It would appear that harvesting rights assume secondary importance in situations of conflict. These two examples suffice to suggest the limitations placed on what at first glance appear to be exclusive rights on Category I and Category II lands.

On Category III lands, which are treated as public lands, native people have certain exclusive hunting and fishing rights for certain species and exclusive trapping rights. They also have some priority in harvesting. In general, however, Category III lands are governed by provincial legislation and regulations for the benefit and use of both native and non-native interests.

As a result of the agreement, a Co-ordinating Committee on Hunting, Fishing and Trapping was established, made up of representatives of the federal and provincial governments and of the Cree and Inuit people. The committee has been established to review, manage, supervise and regulate the hunting, fishing and trapping regime. It is essentially a consultative body where issues and proposed regulations may be discussed prior to making recommendations to the provincial government which may or may not act on these recommendations.

This brief overview of the hunting, fishing and trapping regime does not in any way adequately describe the objectives or operational aspects of the regime as set out in the agreement. It is presented only to suggest that the regime does provide a forum for native people to express their views on these fundamental issues and does establish native priority in certain circumstances. Native interest in and concern for renewable resource activities as part of a broader environmental interest are acknowledged in the provisions establishing the hunting, trapping and fishing regime. Accordingly it supplements the more structured environmental protection regime discussed above.

6. INDUSTRY/COMMUNITY/GOVERNMENT INTERACTION UNDER THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT

The three previous chapters have outlined three components of the James Bay and Northern Quebec Agreement of particular interest to the Eastern Arctic Study: the land regime, the provisions for local and regional government, and the environmental protection regime. It is by virtue of these three components that industry/community/government interaction takes place. In brief, this interaction occurs mainly through two distinct channels: local controls over the impact of development activities, and the environmental protection regime. This chapter will discuss and assess the nature of and limitations on each of these mechanisms.

It is important to remember that a fundamental objective and subsequent result of the James Bay and Northern Quebec Agreement was to confirm the right of the Province of Quebec to develop the whole of the James Bay Territory, subject to a range of restrictions. The primary actors involved in development have been, and continue to be, the James Bay Energy Corporation, the James Bay Development Corporation, and Hydro-Quebec. Less active are private industrial concerns such as mining companies although they are being encouraged to engage in joint ventures with the JBDC. The central role played by public corporations in the James Bay Territory, most particularly south of 55 where most activity has occurred, has given a particular character to industry/community/government interaction.

Local Controls over Development Activities

It does not seem an over-statement to suggest that local governments have little effect on development. This may be attributed to a considerable degree to the categories of land delineated in both the Cree and Inuit areas. As has already been described, the land regime establishes three categories of land which differential local influence/control with respect to each.

Category I lands are owned, generally speaking, by ethnic corporations and by local govenments. They comprise a small proportion of the lands of the territory and are composed of those areas made up of and immediately surrounding communities. While local governments have traditional zoning and planning responsibilities, these are restricted in application since existing third party interests (i.e. existing at the time of the agreement) are not affected. Moreover, the JBDC or other interests that had been granted rights before the agreement was executed

need not have the permission of the community in order to extract minerals on Category I lands; nor must they pay compensation. Other parties do require consent and must pay compensation for use. As can be seen, the local powers of granting or denying permissions are minimized by the narrowness of applicability in terms of interested developers and by the fact that such a small amount of land is involved. It is not known at present whether the proposed Cree Act (i.e., the anticipated federal legislation affecting Cree local government) will enhance local government control over development activities.

Local influence with respect to Category II land has been even more circumscribed. On these lands, which also form only a small proportion of the total area, such local authority as does exist has been exercised in a very limited fashion. It will be recalled that the James Bay Regional Zone Council exercises the authority of the James Bay Municipality over Category II lands and that the Kativik Regional Government can regulate in certain areas with respect to Category II lands. Communities can only be involved with respect to development on Category II lands through organizations such as the Hunters and Trappers Associations rather than through local governments. Those who have a right to access, or who obtain required authorizations, must exercise those rights subject to the hunting and fishing rights of the native beneficiaries, to the extent that this is possible, so as to avoid unreasonable conflict with the rights of the natives. Thus activities deemed compatible with hunting and fishing may be undertaken freely.

Those lands already subject to rights previously granted, moreover, are treated as Category III lands (i.e. no local restrictions). Also, the JBDC has the right to explore, develop and mine Category II land as if it were Category III land.

Category II lands, if expropriated by Quebec for development, must be replaced or compensation paid. Development, however, is given a restricted definition with the result that activities such as exploration and technical surveys are not 'development' and hence do not give rise to right of replacement or compensation.

The vast expanse of the territory comprising Category III land is immune to any local control or influence. Access is regulated by provincial legislation and regulation. The Government of Quebec, JEBC, JBDC, Hydro-Quebec and others authorized to do so are entitled to develop the lands and resources on Category III lands.

Moreover, hunting and fishing rights may be interfered with, in that activities on Category III lands may have detrimental downstream effects.

The case is different north of 55 where the Kativik Regional Government functions as a municipality, with the by-law powers with respect to environmental matters associated with that status.

The agreement makes no provision for formal consultation between local government structures and industrial developers, even on Category I and Category II land. It would seem that the only mechanisms (in an institutional sense) available to communities are their limited by-law power and their planning and zoning authority, both of which are restricted to Category I lands. The community thus has minimal opportunity to influence the pace or nature of development in the surrounding areas except through the environmental protection regime which, as will be seen below, is also limited in effect. It is unlikely that a developer would voluntarily consult with a community, let alone negotiate conditions of development, about proposed activities beyond the immediate vicinity of the community. Those developers who do deal directly with communities may be seen as exceptions to the general rule. Rather, such matters will be handled in the usual course of events by the provincial government, the JBEC and/or the JBDC. The extent to which community views and interests are considered is questionable. Such on-going contact as does occur is undertaken on an informal basis with respect to environmental impact studies.

The absence of direct community/industry interaction may assume more importance in the future if development activities of a more localized nature are proposed. To date the scale of development in the form of the vast hydroelectric project has been large and, as mentioned earlier, was presented to the people in the territory as essentially a fait accompli. Also community and band councils have been concerned with the continuance and economic viability of traditional pursuits rather than with other economic development activities. To date only limited interest has been demonstrated in the so-called spin-off benefits of development such as employment, entrepreneurial opportunities and so on. This may in large part be attributed to the nature and location of the development to date. This, it may be suggested, could change in the future if the benefits of development seem more attractive or desirable to native residents of the territory. Should this occur, communities may be less statisfied with the restricted role allotted to them under the agreement.

The Environmental Protection Regime

There are three major objectives of the environmental protection regime established in the James Bay Territory:

i protect the Cree and Inuit economy, culture and way of life;
ii protect the environment and manage the resources;
iii allow development under particular circumstances.

These may be seen as conflicting objectives. The result has been that development has tended to take primary place in the operation of the regime. In the previous chapter two mechanisms were identified as central to the environmental protection regime: an environmental and social impact assessment and review procedure for certain types of proposed development projects; and advisory bodies to oversee the assessment and review procedure and to make recommendations to government. Neither of these mechanisms provides specifically for local or community involvement, leaving it up to proponent development and communities to develop informal relationships where necessary and/or possible. Moreover, each is limited in its application and effect.

The purpose of an environmental and social impact assessment and review procedure such as that established under the agreement is to encourage consideration of environmental and social concerns in the decision-making process related to development. It is aimed at limiting the environmental impact of development activities rather than at deciding whether in fact the development should proceed. The scope of the inquiry extends only to environmental and, to some extent, to socio-economic matters. The regime does not provide a forum for discussion and negotiation of, for example, native participation in development or formal socio-economic agreements.

The regime also shares many of the characteristics of other impact assessment arrangements: reliance on the proponent for both information and analysis; an underlying assumption that the development will proceed in one form or another; exemption from assessment for a wide range of projects and so on. The regime in the James Bay Territory, moreover, does not provide for formal public hearings although the agreement provides that, for example, interested parties such as communities may make written representations to the EQC and that the EQC may 'at its discretion' invite interested parties to make representation to it. Thus, while the possibility for community and individual participation does exist, it is not guaranteed nor formalized.

Local influence on the regime can potentially be exercised only through the representatives from the Cree Regional Authority and Kativik Regional Government that are on the advisory bodies established to oversee the assessment and review procedure. It must be noted that these representatives are regional, not local, representatives and as such do not necessarily reflect parochial community concerns or interests. The advisory bodies in the Cree territory, moreover, are merely consultative in nature and have minimal decision-making authority. The Environmental Quality Commission established in the territory north of

55 is the exception in that it has some decision-making powers and can in fact require environmental assessments and can impose conditions on development that are proposed on land under provincial jurisdiction.

Such authority is granted on the grounds that Kativik, which has representation on the EQC, is seen as a public nonethnic government, whereas the Cree institutions (the band councils and the CRA) are both private and ethnic. The former is considered publicly accountable whereas the latter are not.

Those who have worked with the environmental protection regime have commented that its complex administratively-heavy arrangements have made it difficult for local governments to deal with. It is bureaucratically complex, with confusing jurisdiction and different categories of land that present barriers to local involvement in the environmental impact assessment process. Also, it has proven difficult to hire and train local administrators to deal with the procedures. This has resulted in the development of an enhanced role for experts and consultants and the dependency associated with such outside assistance.

In sum, the regime would appear to be very much a 'top down' bureaucratic arrangement. Proponents or developers deal primarily with provincial and/or federal departments and agencies regarding the nature and conditions of development, rather than with local councils or the local community generally. The restricted application of the process and its basic consultative and advisory orientation further limits possibilities for effective community/industry/government interaction.

It may be posited that the environmental protection regime may not be satisfactory to communities. Provincial officials, however, suggest that there is merit in the regime nevertheless, because it forces developers to appear before tribunals in order to explain their proposals and may lead to modifications in the form of the development. In other words, senior levels of government cannot simply allow development to go ahead with no restriction and no thought to local reactions or preferences. This may be the case, but it does not remedy the fact that communities have minimal formal involvement in the decision-making process, most particularly in those areas beyond the immediate vicinity of the community.

Negotiations concerning Phase II of the vast James Bay project will be carried out through the structures established under the agreement. In the Cree territory, environmental matters will be handled by the environmental protection regime while other concerns such as socio-economic matters will be negotiated in another forum. Inuit involvement in Phase II will occur through the Environmental Quality Commission. These negotiations may provide a useful test with respect to the utility and legitimacy of the environmental protection regime.

Future Relevance for the Eastern Arctic Study

As the only comprehensive land claim settlement concluded in Canada to date, one would expect that the James Bay and Northern Quebec Agreement would have direct relevance not only for the Eastern Arctic Study but also for those groups and individuals who are at present involved in claims negotiations. Indeed, the agreement is the only substantive 'indication available to date of how far the federal government is likely to go in negotiating a native land claim settlement. While all parties engaged in negotiations currently dismiss the James Bay and Northern Quebec Agreement as a persuasive precedent, it nevertheless stands as the only Canadian model available.

Its direct relevance for the Eastern Arctic Study specifically and for others interested in land claims generally, may however be restricted by several factors. Perhaps most significant is the overwhelming presence and authority of public developers - specifically JBEC, JBDC and Hydro-Quebec - in the territory covered by the agreement. This fact, which has relegated to secondary importance the role played by private interests, distorts the potential for direct industry/community consultation such as has been described in other Eastern Arctic Study case studies. Moreover, the vast scale, both physically and in terms of direct geographic impact, of the James Bay project which gave rise to and coloured the negotiations also distinguishes the James Bay context from those found in the Northwest Territories. This is not meant to minimize the implications or effects of existing or future resource development activities in the NWT but only to point out what appears to be a difference between the two situations. And, finally, the constitutional framework is different in that in the James Bay case a provincial government was also involved at all stages of negotiation and shared major responsibility for implementation.

While in a general sense the relevance of the James Bay and Northern Quebec Agreement may be limited, several features of the agreement and of the arrangements that have emerged subsequently are of interest to the Eastern Arctic Study, most particularly when local government structures and alternative modes of industry/community/government interaction are considered.

As with most matters covered in the agreement, local government structures are treated differently for the Cree and for the Inuit. The arrangements north of 55 are of more interest to the Eastern Arctic Study because of their public, non-ethnic nature and their integration into a general, legislatively-based municipal scheme. These features have allowed the delegation of decision-making authority to local governments and to other bodies such as the Environmental Quality Commission. This is in marked contrast to the Cree territory where band councils under federal authority have continued to exist, and where other

structures such as the Cree Regional Authority have developed as bureaucratic or administrative bodies rather than political entities.

This withholding of certain political decision-making powers concerning, for example, mitigation of environmental impacts of development reduces substantially the influence of native residents on the larger decision-making process. This demonstrates the necessity for creating responsible and accountable political bodies that may have meaningful political power delegated to them. The right to advise or to participate is only of limited effect and is not a substitute for decision-making authority.

It may be observed that the agreement itself envisages a restricted role for local government since regional structures are given the opportunity of assuming the dominant position. In both parts of the territory covered by the agreement, it is optional for local authorities to retain power at the local level or to delegate it upward to the regional body: either the Cree Regional Authority or Kativik Regional Government. It appears to be the case, particularly in the Cree area, that authority is being passed to the regional body. This may have had the effect of retarding the development of local government institutions. To the outside observer the question arises as to what is the most appropriate focus for political power: the local level, or the regional level.

The limited powers given local governments with respect to future development seem to have presented further barriers to the evolution of local structures and processes that could be involved in industry/community/government dealings about development. This raises the question as to which level of government - the local or regional - is best suited to the role of negotiating with companies and senior levels of government on development issues.

Also of interest is the almost total reliance of the environmental protection regime as a mechanism for native and community participation in the development process. The limitations of the process, in terms of both its scope and its application, have already been commented upon. The question may also be raised, however, as to whether this type of process is fundamentally unsuited to the task of negotiating the pace, scale, or implications of development with communities that may be affected. Yet the process has been put forward as a forum for local involvement and as a vehicle for native participation. The case suggests the inadequacies of this type of process in meeting these objectives.

It is unlikely that future claims settlements will follow the James Bay pattern. Public statements and documents indicate that native organizations are strongly committed to viable political structures at the local/regional level, to participation in economic development and to a meaningful level of involvement in administrative/regulatory bodies.

It is possible, however, that, as happened in the case of the James Bay settlement, negotiable matters may be reduced if large-scale development seem imminent prior to a claims settlement. Perhaps the most relevant lesson to be drawn from the James Bay case is the effect of negotiating a settlement under intense pressure. In James Bay this fact affected the tenor of the negotiations, the amount of leverage or negotiating power of the various parties, the content of the agreement, and the course of implementation.

APPENDIX A

CHRONOLOGY OF EVENTS 1965-1976*

1965	Provincial studies of the potential of the James Bay area begin.
December 1969	Tripartite Committee is formed consisting of representatives of the Quebec and Federal governments and Indians of Quebec Association, to deal with general problems related to hunting, fishing, taxation and other questions of concern to Quebec Indians.
April 1971	Premier Bourassa announces proposals concerning development of hydro-electric projects in the James Bay area.
May 1971	Lawyer for the Grand Council of the Cree writes to Department of Indian Affairs and Northern Development that it seems 'primordial that the question of the territorial rights of the Indians be settled immediately and before the project has developed much further'.
	Meeting is held between Quebec Indian Band representatives and Department of Indian Affairs and Northern Development to discuss rights of Indians in Quebec and steps to be taken with the province to ensure these rights. Indians request that department be present at any future negotiations with Quebec in order to support native interests.
June 1971	Minister of Indian Affairs and Northern Development informs Premier Bourassa of his concern and urges him to accelerate the work of the Tripartite Committee.
	Premier Bourassa indicates to the Minister of Indian Affairs and Northern Development that the working document on Indian rights being prepared by his officials will soon be ready and submitted to the Indians of Quebec Association.
July 1971	Joint Federal and Provincial Environmental Study Group is formed to study ecological impact of James Bay project.
	National Assembly of Quebec passes Bill 50 creating James Bay Development Corporation to promote development and exploitation of all natural resources within the project area.

* Source: Office of Native Claims, Department of Indian Affairs and Northern Development.

October 1971 — Federal government provides grant to Indians of Quebec Association so it can inform native people in James Bay area of proposed developments.

January 1972 — Minister of Indian Affairs and Northern Development again expresses his concern to Premier Bourassa and urges Tripartite Committee meeting.

Indians of Quebec Association meet with Quebec Department of Natural Resources. Quebec refuses to accept as a basis for discussion the association's request of $5 billion compensation for lost hunting grounds in James Bay area.

February 1972 — Report of Joint Federal and Provincial Environmental Study Group is released: states clearly that the impact of proposed development on native population in the area, who have never signed treaties and have no reserves under the terms of the Indian Act, is the most pressing and serious question to be resolved.

Quebec's Minister of Natural Resources informs Minister of Indian Affairs and Northern Development that negotiations between the provincial government and Indians of Quebec Association are still in progress and that Ottawa approval will be sought after agreement is reached.

March 1972 — The Indians of Quebec Association states that it is about to seek an injunction to halt the James Bay Development Corporation on the ground that has no right to proceed with the project until Quebec establishes clear title to the land involved.

April 1972 — Chief Max Gros-Louis requests that Minister of Indian Affairs and Northern Development use his power to stop any intrusion 'of their (the Indians') rightfully owned territory by the Government of Quebec'. Petition dated July 1, 1971 from Chiefs in the James Bay area is attached to letter.

Indians of Quebec Association decide to halt James Bay project at meeting in Fort George and say that Indians may seek ways of taking matter to court.

House of Commons debate on James Bay development project and its consequences for native people of the area (Hansard, April 28, pp. 1727-1756).

May 1972 — Charging the Quebec government with bad faith during negotiations, Indians and Inuit of Northern Quebec announce they have started legal action against Quebec Attorney-General and James Bay project contractors to halt project.

James Bay Development Corporation states that court action against the Corporation and Hydro-Quebec will not stop preliminary work.

Premier Bourassa announces that James Bay project will begin with development of La Grande River complex (most northern river), flooding 3,400 square miles. James Bay Development Corporation tells Quebec Natural Resources Committee that development of La Grande will not interfere with Indians in the area nor with the flora and fauna of Lake Mistassini.

Meeting between Minister of Indian Affairs and Northern Development and Premier Bourassa to discuss implications of James Bay project for Indians. Minister urges Premier and James Bay Development Corporation to meet with Indians for full discussion.

June 1972 — Indian and Inuit leaders issue ultimatum giving federal and Quebec governments until June 14 to negotiate substantial changes to James Bay project and stating that if they have not had at least one meeting by that date they will file for temporary injunction to stop the project.

August 1972 — Tripartite Committee meeting concludes that Indians should negotiate on James Bay directly with James Bay Development Corporation.

September 1972 — Meeting between Indians, federal government and James Bay Development Corporation agrees that Indians of Quebec Association and James Bay Development Corporation will form working committee made up of specialists to study ecological implications of project.

October 1972 — Indians meet with province. Quebec advises Indians that James Bay Development Coporation will not modify project plans and that the provincial negotiating committee should now respond.

Indians of Quebec Association announces it will ask the Superior Court of Quebec to halt the James Bay project.

December 1972 - November 1973 — Indians present interlocutory injunction in court. Federal representatives present documented court evidence relating to Indians' rights in Northern Quebec. James Bay Development Corporation presents its defence in court. Court grants Interlocutory Injunction. (Injunction lifted several days later by Quebec Court of Appeal.)

November 1973 — At meeting among Cree, Inuit, federal and provincial governments, parties decide to begin negotiations.

January 1974	Provincial government makes offer of settlement to Quebec Cree and Inuit.
January 1974 - May 1974	Meetings between Northern Quebec Inuit Association, Indians of Quebec Association and provincial government to discuss provincial offer.
June 1974	Grand Council of the Cree decides to handle negotiations on their own without recourse to Indians of Quebec Association.
July 1974	Northern Quebec Inuit Association and Grand Council of the Cree to discuss provincial offer. Federal government is formally involved for the first time.
July 1974 - November 1974	Negotiations continue.
November 1974	Agreement-in-Principle is signed.
November 1974 - November 1975	Intensive negotiations involving federal government and the six other signatories to the Agreement-in-Principle.
November 1975	The James Bay and Northern Quebec Agreement signed (both levels of government enacted implementing legislation over the course of the next several years.)

APPENDIX B

MAJOR ELEMENTS OF THE JAMES BAY AND NORTHERN QUEBEC AGREEMENT

Note: Section numbers refer to sections in the James Bay and Northern Quebec Agreement.

Compensation (Section 25)

$225 million: $75 million to be paid over 10 years beginning March 31, 1976.
Canada to pay $32.75 million of this, Quebec $42.25 million.

$75 million to be paid by Quebec as Hydro-Quebec royalties beginning one year after first turbine-generator is in commercial operation, and until 1997.

$75 million to be paid by Quebec in the form of provincial debentures over five years beginning in 1975.

Taxation (Section 25)

Principal payments to Cree and Inuit exempted from federal and provincial taxation, but revenues from them subject to general tax legislation.

Legal Entities (Sections 26 and 27)

Cree and Inuit corporations (to be incorporated by Quebec) to receive and administer compensation. Canada and Quebec to have minority positions on the boards of directors for eight years for Inuit, ten years for Cree.

Administration of compensation to be subject to a 20-year period of control on investments and expenditures, incuding a 25 percent limit on investments in native business ventures, education, community and charitable purposes, with the remainder to be placed in specified types of investments. No per capita distribution to be permitted.

Land Regime, Cree (Section 5)

Category Ia lands: Cree to receive 1,274 square miles. Administration, management and control to be under Canada's jurisdiction, with bare title being retained by Quebec.

Category Ib lands: Cree to receive 821 square miles. These lands are to be owned outright by the Cree Community Corporations under provincial jurisdiction. They can be sold only to Quebec.

Category 1 lands (a and b) total 2,095 square miles. Quebec will maintain mineral rights in this area, while the Cree will have exclusive use of forest resources. These lands are subject to public servitudes with compensation in land or money.

Category II lands: Cree to have exclusive hunting, fishing and trapping rights over 25,130 square miles. Quebec will retain title to and jurisdiction over these lands. They will be subject to public servitudes without indemnity and may be taken for development, subject to compensation or replacement.

Land Regime, Inuit (Section 7)

Category I lands: Inuit to receive 3,250 square miles. Title is to be vested outright in Inuit Community Corporations. They may be sold only to Quebec and Quebec will retain mineral rights over them. They are subject to public servitudes with compensation in land or money.

Category II lands: Inuit to have exclusive hunting, fishing and trapping rights over 33,400 square miles. Quebec will retain title to and jurisdiction over these lands. They may be taken for development, subject to compensation in land or money.

Local Government, Cree (Sections 9, 10 and 11)

On the Cree Category Ia lands, the federal Department of Indian and Northern Affairs will be negotiating the terms and conditions of local government, and will be preparing legislation specifically for this purpose. This legislation will provide for such items as incorporation for local government purposes; increased powers for Band Councils, including those described in Section 28(2) and all or most of Section 73 of the Indian Act; all other powers as may be incidental to the effective exercise of local government.

Each local government authority shall be deemed to be a public corporation under Quebec law for the purpose of ownership, management and administration of Category Ib lands. Each corporation will have the powers of a municipality under the Quebec Cities and Towns Act.

There will be a Cree Regional authority, composed of all corporations with jurisdiction of Cree Ib lands. This Authority will be a corporation with full powers within the meaning of the Quebec Civil Code, and may co-ordinate and administer all programs on Category I lands if the bands so delegate.

There will be a Cree Zone Council composed equally of representatives appointed by the Regional Authority and the James Bay Municipality. It will exercise the powers of the James Bay Municipality over all Cree Category II lands within the area covered by Bill 50.

Local Government, Inuit (Sections 12 and 13)

Local and regional municipal governments will be established under provincial jurisdiction and by special acts for the area north of the 55th parallel. They will not be ethnic in character. Each will have powers at least equal to those of non-chartered municipalities in Quebec.

The Department of Indian and Northern Affairs will continue to bear responsibility for some program costs at existing or lower levels.

Environment and Future Development, Cree (Section 22)

A James Bay Advisory Committee on the environment will be established which will advise on the need for new and revised legislation and other protective measures. It will consist of four federal government representatives, four Quebec representatives, four representatives from the Grand Council of the Cree, and the chairman of the Hunting, Fishing and Trapping Coordinating Committee.

In addition, the Environment and Social Impact Review Committee (Provincial) and the Environmental and Social Impact Panel (Federal) will carry out impact assessments on all capital projects in the Territory.

Environment and Future Development, North of 55 (Section 23)

An Environmental Quality Commission (EQC), to be composed of four regional government representatives (at least two of whom will be Inuit) and four Quebec representatives with an alternating chairman, will provide impact assessment for all projects proposed by Quebec in the area.

An Environmental and Social Impact Review Panel, to be composed of two Inuit and three federal representatives, will provide impact assessments for all development projects sponsored by Canada in the area.

An Environmental Advisory Committee, to be composed of three regional government representatives, three federal representatives and three Quebec representatives, will be a consultative body for all environmental matters affecting the territory.

Hunting, Fishing and Trapping (Section 24)

Native people will have exclusive hunting, fishing and trapping rights on Category I and II lands. On Category III lands, native people will not be subject to closed seasons and will have exlusive rights to certain species except for migratory birds and marine mammals, but non-natives may hunt, fish or trap all other species subject to closed seasons.

Native people will have the exclusive right to own outfitting operations on Category I and II lands, and will have the right of first refusal on Category III lands for 30 years.

A Hunting, Fishing and Trapping Coordinating Committee, to be composed of six native and six government members, will advise both levels of government on the legislation and its administration, and will oversee research done on native harvesting during the 1973-79 period.

Health Services, Cree (Section 14)

A Cree Regional Board, to be established under Quebec jurisdiction, will administer health and related social services on Category I and II lands.

The Department of National Health and Welfare will transfer its facilities to the board during a transitional period ending in 1981.

Health Services, Inuit (Section 15)

A council composed of representatives of the regional governments in the area north of 55' will serve as the Kativik Health and Social Services Council. This Council will be under Provincial jurisdiction to provide health and related social services north of 55'.

The Department of National Health and Welfare will transfer its facilities to the council during a transitional period ending in 1981.

Education, Cree (Section 16)

A Cree School Board, representing the eight Cree communities in the Territory and the Grand Council of the Cree will be established for Category I areas and for Cree in Category II areas. School board to be subject to the Quebec Education Act. Cree and English or French to be the languages of instruction.

Canada and Quebec to transfer education facilities to the board over a three-year transition period. Staff to be transferred during 1978-79. Canada and Quebec to pay operating and capital costs in a 75-25 ratio.

Education, Inuit (Section 17)

A Kativik School Board, representing each municipality and the regional government in the area north of 55', will be established for that area. To be subject to the Quebec Education Act.

Inuktituut and English or French to be the languages of instruction.

Canada to transfer education facilities to the board over a three-year transition period. Staff to be transferred during 1978-79. Canada and Quebec to pay operating and capital costs in a 25-75 ratio.

Administration of Justice, Cree (Section 18)

Special provisions for the administration of justice provide that:

- courts and tribunals may sit in Cree communities;
- the Judicial District of Abitibi be expanded and modified;
- the rules of procedure established by the Justices of the District are to be set in consultation with the Cree;
- there be written and oral translation of all proceedings into Cree on request;
- training programs for court functions be established;
- places of detention be established north of the 49th parallel.

Administration of Justice, Inuit (Section 20)

Special provisions for the administration of justice provide that:

- courts and tribunals may sit in Inuit communities;
- a circuit court be established;
- Judicial District of Abitibi be expanded and modified;
- rules of procedure established by the Justices of the area take into account Inuit customs and lifestyles;
- there be written and oral translation of transcripts into Inuktitut on request;
- training programs for court functions be established;
- places of detention be established north of the 49th parallel.

Police, Cree (Section 19)

Cree units of the Quebec Police Force, to be composed of special constables, to be established;

- Cree communities may also establish and operate their own police forces;
- Canada and Quebec to enter into a cost-sharing agreement to provide for the direct costs of policing services provided by the Cree special constables.

Police, Inuit (Section 21)

Kativik Regional Government authorized to establish and maintain a police force within its area or jurisdiction.

Constables to be hired and placed in Inuit communities on a 1 to 500 population basis. Inuit not formally qualifying may be appointed as special constables.

Economic and Social Development, Cree (Section 28)

A James Bay Native Development Corporation to be established with Quebec funding to promote native business ventures. Trapping, tourisms and crafts to be encouraged.

A Federal-Provincial-Cree Economic and Community Development Committee to be established with assessment and advisory roles vis á vis the corporation.

Income Security for Cree Hunters and Trappers (Section 30)

Province and Cree to establish a Hunters and Trappers Income Security Board to administer an income security program. Benefits to be limited to families engaged primarily in hunting, fishing or trapping: $1000 per annum for the head of the family; $1000 for the spouse; $400 for each dependent; $10 per day per adult while fishing, trapping or hunting to an annual maximum of $2400.

Economic and Social Development, Inuit (Section 29)

Quebec to pay $9000 to Inuit hunters to provide food for the aged and handicapped.

There to be one hunter per community plus one percent of the total population.

Quebec to provide hunting, fishing and trapping equipment.

There to be two Federal-Provincial-Inuit Committees on Economic and Social Development and Manpower and Training.

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THE CENTRE FOR RESOURCE STUDIES

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EASTERN ARCTIC STUDY

The Centre for Resource Studies and the Institute of Local Government, both of Queen's University in Kingston, Ontario, are undertaking a study of the ways in which the land claim of the Inuit Tapirisat of Canada (ITC) may affect local government and mineral development in the Northwest Territories (NWT). Financial support for the study is being provided by an independent agency, the Donner Canadian Foundation. Advisory support is being provided by the ITC, the federal government, the Government of the Northwest Territories, and many other agencies, companies and interested groups.

The objectives of the Eastern Arctic Study include the following:

1. to study the potential impact of the settlement of ITC land claims, and of constitutional development in the NWT, on local government in the ITC area;

2. to study the potential impact of these changes on mineral development (including both petroleum and mining) in the ITC claim area.

3. to present the results of this research in a manner which will permit its use by northerners and other interested parties to anticipate possible difficulties and mitigate their effects.

Local government is extremely important to the residents of the Northwest Territories, because local councils and committees provide services that are basic to everyday needs. In addition, a community's local government can often act as the interpreter and advocate of peoples' interests and needs.

We expect the land claim negotiations to result in two related outcomes.

i Local governments will be given increased responsibilities in the land claim area. Some changes are already in progress, chiefly through the initiative of the communities themselves and of the Government of the Northwest Territories. ITC also supports strong local government. The phrase 'local government' refers to any governing authority established below the territorial level. It could include, for example, regional governments as well as hamlet or settlement councils and their committees.

ii There will be a significant increase in the degree of influence exerted by local governments, and by native institutions such as development corporations and cooperatives, on resource planning and the mineral development process.

Thus we expect the settlement of claims to affect significantly the climate for mineral development in the NWT. Native people will have strengthened local governments and an expanded role in planning the nature and direction of resource development.

The possibilities for mineral development in the ITC claim area are substantial, and the future of resource development in this region has implications for the welfare of all northerners, and for all Canada. It is therefore important that all parties to the negotiating process understand the possible consequences of their decisions and actions. The purpose of this study is to contribute to that understanding.

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EASTERN ARCTIC STUDY PUBLICATIONS

The following EAS publications are available from the Centre for Resource Studies, Queen's University, Kingston, Ontario K7L 3N6:

A Climate for Change: Alternatives for the Central and Eastern Arctic Study, by Katherine A. Graham, M.P. Sharon Brown, Anne B. McAllister and Margot J. Wojciechowski, Final Report of the Eastern Arctic Study, 198 pages, published 1984.

The Inuit Land Claim, Constitutional Development, and Local Government Reform in the Northwest Territories: An Overview, by Katherine A. Graham and Anne B. McAllister, 50 pages, published 1981.

Industrial Development in the Eastern Arctic Study Area: A Preliminary Overview, by C. George Miller, 31 pages, published 1981.

Eastern Arctic Study Case Study Series: The Alaska Native Claims Settlement, by David Baker, 100 pages, published 1982.

Eastern Arctic Study Case Study Series: Mineral Exploration in the Baker Lake Area, by Anne B. McAllister, 58 pages, published 1982.

Eastern Arctic Study Case Study Series: The Development of the Polaris Mine, by Katherine A. Graham, 61 pages, published 1982.

Eastern Arctic Study Case Study Series: The Nanisivik Mine, by Margot J. Wojciechowski, 62 pages, published 1982.

Eastern Arctic Study Annotated Bibliography, by M.P. Sharon Brown, 68 pages, published 1984.

Eastern Arctic Study Case Study Series: James Bay Settlement, by Anne B. McAllister, 61 pages, published 1985.

Eastern Arctic Study Case Study Series: Beaufort Sea Oil and Gas Development, by M.P. Sharon Brown, Katherine A. Graham and Margot J. Wojciechowski, 85 pages, published 1985.